

California

WATER RIGHTS FACT SHEET

August 15, 2001

Water Rights System:

California's system of water rights is referred to as a "dual system" in which both the riparian doctrine and the prior appropriation doctrine apply to water rights. There is also a separate doctrinal basis for ground water, as well as pueblo rights, so a more accurate classification of California's system would be a "plural system". Water rights in California are use rights. All waters are the property of the state. A water right in California is a property right allowing the use of water, but it does not involve ownership of the water. California's water law is contained in the California Code of Regulations, Title 23, and can found at: <http://www.calregs.com/>.

Riparian rights result from the ownership of land bordering a surface water source (a stream, lake, or pond). As a class, these rights are senior to most appropriative rights, and riparian landowners may use natural flows directly for beneficial purposes on riparian lands without applying for a permit (see Appendix One for Attributes of Riparian Rights).

Appropriative rights are acquired by putting surface water to beneficial use. Prior to 1914, appropriative rights could be claimed by simply diverting and using the water, posting a notice of appropriation at the point of diversion, and recording a copy of the notice with the County Recorder. Since 1914, the acquisition of appropriative rights has required an application through the State Water Board.

In addition to riparian and appropriative rights, California recognizes pueblo rights. These rights are derived from Spanish law whereby Spanish or Mexican pueblos could claim water rights. As a result, pueblo rights are paramount to the beneficial use of all needed, naturally occurring surface and subsurface water from the entire watershed of the stream flowing through the original pueblo. Water use under a pueblo right must occur within the modern city limits, and excess water may not be sold outside the city. The quantity of water available for use under a pueblo right increases with population and with extensions of city limits. In general pueblo rights are limited to use of water for ordinary municipal purposes.

Responsible agency:

Responsibility for water in California is shared among several agencies. The State Water Resources Control Board (State Water Board) is responsible for the water rights and water quality functions of the state. They have the jurisdiction to issue permits and licenses for appropriation from surface and underground streams. The board also has the authority to declare watercourses fully appropriated. The California courts have jurisdiction over the use of percolating ground water, riparian use of surface waters, and the appropriate use of surface waters initiated prior to 1914. The Department of Water Resources is responsible for planning the use of state water supplies, and develops, in consultation with the California Water Commission, rules and regulations for this purpose.

Application Process:

Any entity intending to appropriate water is required to file an application for a water right permit (or a use registration for small scale domestic use) with the State Water Board. A list of available applications can be seen in Appendix Two. **A permit is not required from riparian right holders, ground water users, users of purchased waters, or those who use water from a spring or standing pool lacking a natural outlet on the land they are located.** Once the application or registration has been accepted, a priority is established in relation to other appropriators. For domestic registration, the State Water Board provides a Certificate of Registration which establishes general conditions under which the diversion may be made. When an application for a water right permit is filed, public notice is given to interested parties. This indicates an opportunity to file protests against the proposed application. If differences cannot be resolved, either a field investigation (for small applications requesting 3cf or 200 acre-feet per year) or a State Water Board hearing is conducted.

An application for a new water appropriation is approved if it is determined to be for a useful or beneficial purpose and if water is available for appropriation. In evaluating an application, the Board considers the relative benefits derived from the beneficial uses, possible water pollution, and water quality. If a permit is approved, it may be approved in full or it may be subject to specified conditions. A decision or order from the State Water Board is reviewable by the Superior Court. Once the State Water Board issues a permit, the use and diversion of water is authorized (see Appendix Three for a summary of the steps to obtain a permit).

Once the permittee completes the necessary works, the water is put to full beneficial use, and all terms and conditions are met, a license is issued. The license is the final confirmation of an appropriative right and it remains in effect as long as the license conditions are met and the water is put to beneficial use.

The time frame involved in obtaining a license in California is highly variable. Permit decisions are required to be reached within six months on accepted applications for non-protested projects which do not require extensive environmental review. Applications with unique requirements for environmental review and/or require protest resolution, may extend the time frame by months and even years.

Point of Diversion and Change of Use Procedures:

In 1928, the California Constitution was amended to require reasonable diversion and use in the exercise of all water rights. The only exception to the point of diversion requirement is for instream flow rights. The State Water Board and the courts have concurrent jurisdiction to apply and enforce diversion and use requirements. The holder of an appropriative right may change the point of diversion, place of use, or purpose of use, so long as other rights are not injured by the change. In order to change an attribute of a water right in California, a change application must be filed with and approved by the State Water Board. Change applications follow the application process described above.

State Recognized Beneficial Uses:

Beneficial uses in California include the following:

- * Aquaculture - Raising fish or other aquatic organisms not for release to other waters.
- * Domestic - Water used by homes, resorts, or campgrounds, including water for household animals, lawns, and shrubs.
- * Fire Protection - Water to extinguish fires.
- * Fish and Wildlife - Enhancement of fish and wildlife resources, including raising fish or other organisms for scientific study or release to other waters of the state.
- * Frost Protection - Sprinkling to protect crops from frost damage.

- * Heat Control - Sprinkling to protect crops from heat.
- * Industrial Use - Water needs of commerce, trade, or industry.
- * Irrigation - Agricultural water needs.
- * Mining - Hydraulic mining, drilling, and concentrator tailings use.
- * Municipal - City and town water supplies.
- * Power - Generating hydroelectric and hydromechanical power.
- * Recreation - Boating, swimming, and fishing.
- * Stockwatering - Commercial livestock water needs.
- * Water Quality Control - Protecting and improving waters which are put to beneficial use.

Groundwater:

The vast majority of California's groundwater is unregulated. The state does not have a comprehensive groundwater permit process to regulate ground water withdrawal. There are three legally recognized classifications of groundwater in California: subterranean streams, underflow of surface waters, and percolating groundwater. Subterranean streams and underflow of surface waters are subject to the laws of surface waters and are regulated by the State Water Board. Percolating groundwater, on the other hand, has few regulation requirements.

Percolating groundwater has two subclassifications: overlying land use, and surplus groundwater. Land owners overlying percolating groundwater may use it on an equal and correlative basis. This means that all property owners above a common aquifer possess a shared right to reasonable use of the groundwater aquifer. These rights are similar to riparian rights and since they are correlative, a user cannot take unlimited quantities without regard to the needs of other users. Surplus groundwater may be appropriated for use on non-overlying lands, provided such use will not create overdraft conditions. A permit is not required to use percolating groundwater of either classification, but the appropriation of surplus groundwater is subordinate to the correlative rights of overlying users.

Water Rights:

Water rights in California can be held by any legal entity. There are no restrictions on who can hold water rights, thus the owner can be an individual, related individuals, non-related individuals, trusts, corporations, government agencies, etc.. Water rights are considered real property (they can be owned separately from the land on which the water is used or diverted) and can be transferred from one owner to another, both temporarily or permanently. Any transfer (sale, lease, or exchange) is subject to approval by the State Water Board through the application process discussed above. Approval is granted upon finding that the transfer would not result in injury to any other water right and would not unreasonably affect fish, wildlife, or other instream beneficial use.

An appropriative water right in California can be maintained only by continuous beneficial use, and can be lost by five or more continuous years of non-use. Riparian rights, on the other hand, cannot be lost through non-use. Appropriative rights can also be lost through abandonment, but to constitute abandonment of an appropriative right, there must be the intent not to resume the beneficial use of the water right. As a result, abandonment is always voluntary. The rights to waters lost through abandonment or non-use revert to the public, but only after notice has been given and a public hearing is held.

Adjudications:

In California, adjudication can be initiated through the court or through statutory procedures. Court initiated adjudication occurs when a water right lawsuit is filed in court (all surface and ground water rights may be included in this procedure). In the case of a court initiated adjudication, the court often asks the State Water Board to act as a referee and to conduct an investigation and report back. Statutory adjudications result when one or more entities claim a

right from a specific source and file a petition with the State Water Board. The statutory procedure can be used to determine all rights to any body of water including percolating groundwater. The result of a statutory adjudication is a decree that integrates all rights on the water source and sets quantity, season, priority, etc..

Ongoing Adjudications:

As of 2000, sixteen basins in California had been adjudicated.

Instream flows:

In 1991, California adopted changes to its water laws which permitted the transfer of existing consumptive water rights to the purpose of instream flow. These transfers can be made for the purposes of enhancing wetlands habitats, enhancing fish and wildlife resources, or increasing recreation on the water. California law allows transfers to be either permanent or temporary changes in use; therefore instream flow rights can be both purchased and leased. New instream flow rights retain the priority date of the original right.

California state law does not permit new appropriations of water for instream flow. The State Water Board may attach conditions requiring bypass flows to new consumptive use appropriations, but these conditions do not constitute newly appropriated instream flow rights. When a new water use permit application is submitted, the State Water Board must notify the Department of Game and Fish, which has the authority to recommend amounts of water necessary to preserve fish, wildlife, and recreation in the affected stream. The board then considers these recommendations and may set instream flow requirements as conditions for the new permit. In this way, current flows can be protected even though new appropriations for instream flow rights are prohibited.

Recognized Beneficial Uses for Instream Flow:

Recognized beneficial uses of instream flow in California include enhancing wetlands habitat, enhancing fish and wildlife resources, increasing recreation on the water, and protecting water quality.

Holdership of Instream Flow Water Rights:

Under California law, any "person" (public or private) may hold an instream flow right, as long as that right was established through a legal transfer.

BLM Specific Information:

The application process in California has proven to be expensive for the BLM. For the appropriation process, the BLM pays \$1050 which includes the following: \$100 application fee, \$850 environmental filing fee, and \$100 upon issuance of the permit. Since 1991, water right applicants have been required to pay an \$850 environmental filing fee to the California Department of Fish and Game (CDFG) with each application. This is a concern for the BLM because the CDFG's review is redundant to the BLM's NEPA process. The 1991 memo introducing the fee states that "these fees are not intended to reimburse costs specifically identifiable to individual projects, but rather to offset a relative portion of the cumulative effect of all projects". Therefore the BLM cannot request a waiver of this fee. In terms of other water rights applicants, the BLM is required to approve the necessary right-of-ways prior to the approval of the application by the state.

The BLM is not currently involved in any of California's adjudications. In the past, however, the BLM has been involved in the Eagle Lake and Alturas adjudications.

Regarding federal reserved water rights, the BLM California holds a number of PWRs. In order to assert a PWR 107 or other PWR, the BLM provides notice to the State of California. In the past 15 years, there have been relatively few PWR assertions in California and the extent of unasserted PWRs is unknown. There are a number of PWRs that are included in the Master Title Plans on BLM lands, and these probably originated from assertions made before the early 1980's. The BLM does not have any federal reserved water rights on Wild and Scenic Rivers or on wilderness areas in California.

The relationship between the BLM and the State of California is very close and cooperative. The staff of the Division of Water Rights have been especially helpful to the BLM in interpreting the details involved in each particular water right decision. The staff has a practical mind set and helps the BLM achieve their goals. The BLM also commonly assists the state in their capacity surveys for the BLM reservoirs which are moving from permit to licence. This has expedited the process. The state has also been quite receptive to suggestions from the BLM for streamlining some of the water right reporting requirements.

Official Contact:

State Water Resources Control Board
Division of Water Rights
1001 I Street
Sacramento, CA 95814
916-341-5300
<http://www.waterrights.ca.gov/>

Appendix One: Attributes of Riparian Rights:

- * Riparian rights are of equal priority.
- * Unless adjudicated, the right is not quantified, rather it extends to the amount of water which can be reasonably and beneficially used on the riparian parcel.
- * Riparian rights are correlative. During times of water shortage, the riparian proprietors share the shortage.
- * Water may be used only upon that portion of the riparian parcel which is within the watershed of the water source.
- * The riparian right does not extend to seasonal storage of water.
- * The riparian right is part of the riparian land and cannot be transferred for use on other lands.
- * The riparian rights remains with the land when riparian lands are sold.
- * When riparian lands are subdivided, parcels which are severed from the adjacent water source lose their riparian rights, unless the rights are reserved.
- * A riparian right is not lost by non-use.

Appendix Two: Types of Applications

- * Water Right Application Form
- * Environmental Information Form
- * Notice of Assignment Form
- * Agent Assignment Request Form
- * Application Protest Form
- * Cancellation of Application Form
- * Registration Form
- * Notice of Assignment Form
- * Complaint Form
- * Answer to Complaint Form
- * Petition for Extension of Time Form
- * Petition for Correction Form
- * Petition for Change Form
- * Petition for Change in Distribution of Storage Form
- * Petition for Protest Form
- * Notice of Assignment Form
- * Request for Revocation Form
- * Petition for Temporary Permit Form
- * Petition for Temporary Urgency Change Form
- * Temporary Transfer
- * Long term Transfer
- * Wastewater Change Petition Form

Appendix Three: Steps to Obtain a Permit

Step	Board's Role	Applicant's Role
File Application	If you need assistance Board engineers will help you prepare application forms, small project maps, and other documents. Incomplete applications won't be accepted.	You prepare an application which meets specific requirements, including a filing fee.
Acceptance of Application	Board notifies you within 30 days that either your application is incomplete or that it has been accepted. Acceptance of your application establishes your priority as the date of filing.	Unless you are granted an extension, you must provide any additional information requested by the Board within 60 days of notification. If not, your application may be canceled.
Environmental Review	Your proposed project is assessed to determine to what extent it could alter the environment.	You assume cost for preparation of any required environmental studies.
Public Notice	The Board will send you a public notice describing your proposed project. Copies of the notice are also sent to known interested parties and to post offices in the area of your project for posting.	For small projects, you must post the notice for 40 consecutive days in two conspicuous places near your project site. For large projects, you must publish the notice in a newspaper at least once a week for three consecutive weeks.
Protests	During the noticing period, the Board may receive protests against your proposed project from interested individuals or groups.	If protests are filed against your application, you must respond to them in writing and attempt to reach agreements so that protests can be withdrawn.
Hearings	If protests cannot otherwise be resolved, you and the protestant present your cases at a field investigation or during a hearing conducted by the Board. The Board issues a decision on protested applications based on information gathered at the field investigation or on evidence presented during the hearing.	You prepare testimony and exhibits for presentation at the hearing and cooperate with the Board and protestant toward reaching a satisfactory resolution.
Permit Issuance	A water right permit is issued when protests, if any, are resolved or dismissed, or when the Board approves the application by decision following a hearing. In addition, a permit fee must be paid. During this phase, the Board determines whether water conservation measures are needed.	Prior to issuance of a permit, you must submit a permit fee as directed by the Board. If water conservation measures are required, they will be included as a condition of your permit

